

# **Standard Operating Procedures for Implementing the Virginia State Program General Permit (SPGP)**

## **Residential, Commercial and Institutional Development Activities**

### **1. Preapplication Consultation Requirements:**

a. Prior to the submission of a permit application, a proponent must first obtain a Corps confirmed delineation of all State and federal waters and wetlands (including isolated) on the property (**except for Category A projects**). This confirmed delineation will be provided to the project proponent at the time of the site visit through use of either a carbonless paper form (Enclosure 1) or within approximately two to three weeks thereafter by other correspondence. (Corps staff is encouraged to use the preprinted carbonless paper form for delineations that are accurate, when minor changes are made to the delineation, or when the property is part of due diligence review.)

b. To obtain a confirmed delineation, a project proponent must submit the following information to the Corps:

- 1) the names and addresses of the project proponent and landowner;
- 2) an 8 1/2" by 11" copy of an accurate topographic map or the appropriate portion of a USGS Quadrangle sheet of the property boundary and site survey/property plat.
- 3) a wetland delineation map (prepared in accordance with the Corps 1987 delineation and subsequent applicable guidance) including handwritten or typed wetland delineation data sheets for each "vegetative community" and the location of the data points and transect lines on a map along with a sufficient number of data points to document the proposed nontidal waters and wetland boundary;
- 4) data points up and down slope of the location of the wetland or waters boundary;
- 5) the nontidal wetland and waters boundaries must be flagged and numbered in the field; and
- 6) a distinction between the acreage of wetlands and the acreage and the linear footage of waters (streams, etc.) if specific impacts are proposed.

(If any of this information is lacking, Enclosure 2 can be used to request it.)

While the Corps cannot require the wetlands/waters boundary to be surveyed, we do strongly encourage it. However, we suggest the survey be performed after the delineation has been confirmed.

NOTE: All previously Corps confirmed and still valid delineations satisfy this requirement.

2. Preapplication Consultation: Upon receipt of a request for Corps confirmed delineation, a Corps project manager will be assigned along with a preapplication number.

a. The Corps project manager will

- consult the VDCR database relative to federally listed or proposed threatened or endangered species or proposed or designated critical habitat. In areas of noncritical habitat, the project manager's search will be for one minute (1 mile by 1 mile). This search area will be expanded if the project limits exceed one square mile.

- consult the Virginia Department of Historic Resources' Data Sharing System (DSS) and print out a copy of any known historic properties on the project site. (Instructions on how to access the DSS and print out a copy of a map showing any known historic properties appear as Enclosure 10.)

- provide advice to the project proponent on measures to avoid, minimize, and compensate for unavoidable impacts to nontidal waters and wetlands.

b. The aforementioned information obtained from this review will be conveyed to the project proponent during the site visit and outlined in the checklist (Enclosure 1a) and attached to Enclosure 1 or a subsequent letter. (If a preprinted confirmation letter is not provided to the project proponent at the time of the site visit, the subsequent letter will be sent within two to three weeks of the site visit.)

c. For preapplication consultations involving prospective projects with likely impacts to more than 1 acre of nontidal wetlands or 2000 linear feet of stream, involving the preparation of an environmental impact statement or projects of special interest or circumstances, the Corps project manager will advise the DEQ Regional Program Manager by email and invite DEQ to participate.

3. If a delineation confirmation request is submitted without all or portions of the aforementioned information, Enclosure 2 will be used by the Corps project manager to request the needed information.

4. If an application is submitted without a Corps confirmed jurisdictional determination:

Enclosure 3 will be used by DEQ to request that the needed information be sent to the Corps so that a delineation may be confirmed.

5. Application: A project proponent must complete the pertinent portions of the Joint Permit Application and provide drawings for a permit under the SPGP. When an application is submitted, the applicant must include a copy of the Corps' confirmation letter, delineation map, and data sheets to DEQ. The applicant must also send a copy of the Corps' confirmation letter and delineation map to the locality. For an application to

be considered complete under the Residential, Commercial and Institutional Development Activity of the SPGP (**except for Category A**), the applicant must have first obtained a Corps confirmed delineation of all waters and wetlands on the property.

a. For Residential, Commercial and Institutional Development, Category A activities causing the loss due to filling or backflooding of less than **1/10** acre of nontidal waters or wetlands or the loss due to filling of less than 300 linear feet of stream bed, the applicant must submit **to the Corps one (1)** copy of the pertinent portions of the Joint Permit Application, three **(3) large-scale drawings with a scale no smaller than 1"=200', and one (1), 8 1/2" by 11" drawings (with match lines, if needed)**. The extra copies of the drawings will be used by the Corps if they need to coordinate the project with either the Fish and Wildlife Service or the Virginia Department of Historic Resources due to effects of the project on federally listed species or historic properties. These drawings will show the Corps' confirmed limits of waters and wetlands and the extent of proposed impacts to waters and wetlands. The drawings will also show the location of all known historic properties and all federally designated or proposed critical listed or proposed threatened or endangered species provided by the Corps at the preapplication site visit. (This will facilitate the Corps determining its permit area for purposes of Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act.)

The Corps will determine if the proposed work satisfies the criteria of the SPGP or is excluded. If it qualifies for the SPGP (satisfies the impact limits, the conditions, and there are no effects on federally listed species, critical habitat, or historic properties), the Corps will email the DEQ Regional Program Manager. When the DEQ project manager issues their permit, a copy of the authorization will be sent to the Corps project manager and include the Corps' preapplication number and the following statement:

"The work authorized by this permit satisfies the terms and conditions contained in the Norfolk District, Corps of Engineers' State Program General Permit (SPGP-01) and no additional authorization from the Corps is required."

If the proposed work satisfies all the conditions of the SPGP but will effect an eligible or listed historic properties or federally listed endangered species or designated critical habitat, the Corps will issue a provisional permit using Enclosure 9 and copy DEQ (see below for procedural details).

For Corps processing time purposes, the complete date will be the day the application is received (**assuming the aforementioned information is provided**) and the end date will be the date **the Corps project manager determines the proposed work satisfies the conditions of the SPGP.**

Endangered Species: DEQ will consult both the VDGIF and VDCR databases. If a federally listed or proposed threatened or endangered species or proposed or designated critical habitat is located in the Corps' permit area of any Category A activity, the DEQ will advise the Corps project manager by email. If the project meets all other conditions of the SPGP, the Corps project manager will issue a provisional permit (using Enclosure 9) and advise the applicant that work cannot begin in jurisdictional waters or wetlands until the Corps provides written notification that such work may proceed and under what conditions. **The Corps will provide the Fish and Wildlife Service with 15 days to submit its comments.**

Historic Properties: In cases where the Corps determines that the proposed work will affect a listed or property eligible for listing on the National Register of Historic Places, the Corps will initiate the required consultation with the Virginia Department of Historic Resources. The Corps will make a permit area determination and send Enclosure 5. If the project meets all other conditions of the SPGP, the Corps project manager will issue a provisional permit (using Enclosure 9) and advise the applicant that work cannot begin in jurisdictional waters or wetlands until the Corps provides written notification that such work may proceed and under what conditions. **The Corps will provide the Virginia Department of Historic Resources with 30 days to submit its comments.**

b. For Residential, Commercial and Institutional Development, Category B activities causing the loss due to filling or backflooding of less than 1/2 acre of nontidal waters or wetlands or the loss due to filling of less than 300 linear feet of stream bed, the applicant must submit **to the Corps one (1)** copy of the pertinent portions of the Joint Permit Application, three **(3) large-scale** drawings **with a scale no smaller than 1"=200', and one (1), 8 1/2" by 11" drawings (with match lines, if needed)**. The extra copies of the drawings will be used by the Corps if they need to coordinate the project with either the Fish and Wildlife Service or the Virginia Department of Historic Resources due to effects of the project on federally listed species or historic properties. These drawings will show the Corps' confirmed limits of waters and wetlands and the extent of proposed impacts to waters and wetlands. The drawings will also show the location of all known historic properties and all federally designated or proposed critical listed or proposed threatened or endangered species provided by the Corps at the preapplication site visit. (This will facilitate the Corps determining its permit area for purposes of Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act.)

The Corps will determine if the proposed work satisfies the criteria of the SPGP or is excluded. If it qualifies for the SPGP (satisfies the impact limits, the conditions, and there are no effects on federally listed species, critical habitat, or historic properties), the Corps will email the DEQ Regional Program Manager. When the DEQ project manager issues their permit, a copy of the authorization

will be sent to the Corps project manager and include the Corps' preapplication number and the following statement:

“The work authorized by this permit satisfies the terms and conditions contained in the Norfolk District, Corps of Engineers' State Program General Permit (SPGP-01) and no additional authorization from the Corps is required.”

If the proposed work satisfies all the conditions of the SPGP but will effect an eligible or listed historic properties or federally listed endangered species or designated critical habitat, the Corps will issue a provisional permit using Enclosure 9 and copy DEQ (see below for procedural details).

For Corps processing time purposes, the complete date will be the day the application is received (**assuming the aforementioned information is provided**) and the end date will be the date **the Corps project manager determines the proposed work satisfies the conditions of the SPGP.**

Endangered Species: DEQ will consult both the VDGIF and VDCR databases. If a federally listed or proposed threatened or endangered species or proposed or designated critical habitat is located in the Corps' permit area of any Category **B** activity, the DEQ will advise the Corps project manager by email. If the project meets all other conditions of the SPGP, the Corps project manager will issue a provisional permit (using Enclosure 9) and advise the applicant that work cannot begin in jurisdictional waters or wetlands until the Corps provides written notification that such work may proceed and under what conditions. **The Corps will provide the Fish and Wildlife Service with 15 days to submit its comments.**

Historic Properties: In cases where the Corps determines that the proposed work will affect a listed or property eligible for listing on the National Register of Historic Places, the Corps will initiate the required consultation with the Virginia Department of Historic Resources. The Corps will make a permit area determination and send Enclosure 5A along with a copy of the drawings and available reports showing the extent of the Corps' permit area to VDHR. If the project meets all other conditions of the SPGP, the Corps project manager will issue a provisional permit (using Enclosure 9) and advise the applicant that work cannot begin in jurisdictional waters or wetlands until the Corps provides written notification that such work may proceed and under what conditions. **The Corps will provide the Virginia Department of Historic Resources with 30 days to submit its comments.**

c. For Residential, Commercial and Institutional Development, Category C activities causing the loss due to filling or backflooding of up to 1 acre of waters or wetlands or the loss due to filling of up to 2000 linear feet of stream bed, the applicant must submit **to the Corps three (3)** copies of the pertinent portions of

the Joint Permit Application, **four (4) large-scale drawings with a scale no smaller than 1"=200'**, and **one (1) 8 ½" by 11" drawing (with match lines , if needed)**. The extra copies of the application and drawings will be used by the Corps to coordinate the project with the Fish and Wildlife Service, the Environmental Protection Agency, and the Virginia Department of Historic Resources. These drawings will show the Corps' confirmed limits of waters and wetlands and the extent of proposed impacts to waters and wetlands. The drawings will also show the location of all known historic properties and all federally designated or proposed critical listed or proposed threatened or endangered species provided by the Corps at the preapplication site visit.

DEQ and the Corps will have 45 days from the receipt of a complete Joint Permit Application to make a permit decision. A memo (Enclosure 4) will be used by the Corps project manager to send a copy of the application to the Fish and Wildlife Service, the Environmental Protection Agency, and the Virginia Department of Historic Resources. **EPA and FWS** will be provided 15 days to submit their comments and **VDHR will be provided 30 days** . (This coordination period is part of the overall 45 day review period.) If no project-specific objections are received from the aforementioned agencies and the project satisfies the conditions of the SPGP, the work may be authorized by the Corps using Enclosure 7.

If the Environmental Protection Agency or the United States Fish and Wildlife Service respond within the allotted time frame and submit project specific objections to authorizing the proposed work under the SPGP due to its impact on the aquatic environment or the Corps determines the impacts of the work are more than minimal, the Corps will notify the applicant using Enclosure 6 and the Corps' processing time clock will stop to allow the applicant the opportunity to address the objections if they so choose.

If the applicant modifies the project to the satisfaction of the objecting federal resource agency or agencies and the Corps and the project satisfies the requirements of the SPGP, the Corps will authorize the work under the SPGP using Enclosure 7. In those cases, no work in jurisdictional waters or wetlands may begin until the Corps issues an SPGP verification. (If the Corps project manager need to recoordinate the applicant's response with the agencies, he/she can use Enclosure 8.) If the applicant chooses not to address the objections or cannot address the objections to the satisfaction of the objecting federal agency or agencies or the Corps, an individual permit will be required by the Corps (regardless of whether the DEQ issues an individual permit or a general permit authorization) and will include the issuance of a public notice and a full public interest review.

If the project may affect properties listed on or eligible for inclusion on the National Register of Historic Places or may affect federally listed or proposed threatened or endangered species federally designated critical habitat or proposed

or designated critical habitat, the Corps project manager will follow the procedures outlined under Category A **or B**.

If DEQ determines the project meets the requirements of one of their general permits or an individual permit, including the incorporation of all appropriate and practicable avoidance and minimization and compensatory mitigation, DEQ will issue a general permit authorization or an individual permit.

Projects causing the loss due to backflooding or filling of more than 1 acre of nontidal wetlands or the loss due to filling of more than 2000 linear feet of stream bed will require a Corps individual permit and either a DEQ General Permit authorization or individual permit.

**Linear Transportation Projects (including highways, railways, trails, airport runways, and taxiways) proposed by VDOT, localities, public-private partnerships, or individuals**

1. Application: A project proponent will complete the pertinent portions of the Joint Permit Application for a permit under the SPGP and send it to VMRC. VMRC will forward it the appropriate offices of DEQ and the Corps. DEQ will acknowledge the application and provide the permit application number to the applicant.

2. For Linear Transportation Projects, Category A activities not causing the permanent loss of **les than or equal to** 1/10 acre of nontidal waters and wetlands per road crossing. No additional authorization from the Corps is required provided the project is not excluded from the SPGP and the applicant satisfies conditions a through e of the SPGP. DEQ will include the following language in their permit authorization:

“The work authorized by this permit satisfies the terms and conditions contained in the Norfolk District, Corps of Engineers’ State Program General Permit (SPGP-1) and no additional authorization from the Corps is required provided the final mitigation plan is submitted and approved by the Corps prior to commencement of construction for all stream losses greater than 300 linear feet.” (This last portion of the sentence will only be included when stream mitigation is required.)

3. For Linear Transportation Projects, Category B activities causing the permanent loss of greater than 1/10 but no more than 1/3 acre of waters and wetlands per crossing. No additional authorization from the Corps is required provided the project is not excluded from the SPGP and the applicant satisfies conditions a through e of the SPGP. DEQ will include the following language in their permit authorization:

“The work authorized by this permit satisfies the terms and conditions contained in the Norfolk District, Corps of Engineers’ State Program General Permit (SPGP-01) and no additional authorization from the

Corps is required provided the final mitigation plan is submitted and approved by the Corps prior to commencement of construction for all stream losses greater than 300 linear feet.” (This last portion of the sentence will only be included when stream mitigation is required.)

If the proposed work is associated with a residential, commercial or institutional development, it must satisfy the requirements of the Residential, Commercial, and Institutional Development Activity Category A or B (unless the only impacts to nontidal waters or wetlands are road crossings).

Projects affecting more than 1/3 acre of nontidal water and wetlands or the Corps determines will have more than minimal individual and cumulative impacts will require an individual permit from the Corps regardless of whether the DEQ issues an individual permit or a general permit authorization.

Linear transportation projects that will have an effect on federally listed or proposed species or designated or proposed critical habitat or listed or eligible historic properties will be evaluated as outlined under the Residential, Commercial, and Institutional Development Activity.

NOTE: With any new program, instances will arise where procedures are unclear. In those cases, the Corps and the DEQ project manager will attempt to resolve the issue. If they are unsuccessful, their respective supervisors will discuss the issue. If the issue remains unresolved, Ellen Gilinsky and Bruce Williams will be requested to resolve the issue.